

**BOROUGH OF POINT PLEASANT
ZONING BOARD OF ADJUSTMENT
September 16, 2009**

The regular meeting of the Point Pleasant Zoning Board of Adjustment was called to Order by Vice Chairman Ronald Seebald at 7:00 P.M. Mr. Seebald led the Salute to the Flag. He proceeded to open the meeting in compliance with the "Open Public Meetings Act".

Members Present:

Mr. Seebald Mr. Ganim Mrs. Kasper
 Mr. Scarpello Mr. Sutphen Mr. Sabosik
Ms. Thomson Mr. Seakan
Attorney: Mr. Jackson
Members Absent: Mr. Plum Mr. Schroeder Mr. Holman

Mr. Sutphen made a motion to accept the minutes of September 2, 2009 seconded by Mr. Sabosik.

Roll Call Vote

Mr. Sabosik- Yes Mr. Sutphen-Yes Mrs. Kasper-Yes Mr. Scarpello-Yes
 Mr. Ganim-Yes Mr. Seebald-Yes

Ms. Thomson stepped down.

New Business

09-37- Jennings- Block 316 Lot 10- 2428 Bridge Ave- Use Variance (7:06-7:31)

Mr. Matthew Jennings was represented by Mr. Jason Shamy.

Mr. Shamy stated that Mr. Jennings has applied for a commercial recreation use variance to start a business at 2428 Bridge Avenue. The building is in a commercial multi-family zone. The Board has been supplied with a survey of the property. The building is a multi-use two-story strip center. Mr. Jennings is proposing a fitness wellness center which will not be an intense use and a nice fit in the zone.

Mr. Ganim asked if the Board was approving the whole site or just this unit.

Mr. Jackson replied it would just be the four walls of his unit and since it is a use variance the Board can limit it to one unit.

Mr. Jennings was sworn in.

Mr. Shamy asked Mr. Jennings to explain to the Board who he was in relation to Matt Jennings Boot Camp.

Mr. Jennings stated that Boot Camp is just a hot word in the industry. It is essentially another word for group fitness. The business is currently running at Windward Beach in Brick. This is an adult program which uses body weight exercise in a circuit format.

Mr. Shamy questioned what unit he was going to lease.

Mr. Jennings replied Unit 105 which is approximately 20 x 50. There is a 100 sq ft office, a powder room and the rest is an open unit.

Mr. Shamy questioned what type of equipment he would be using.

Mr. Jennings replied medicine balls and a cable system with long lever arms and a pin to adjust weight.

Mr. Shamy asked if there would be any free weights.

Mr. Jennings replied kettle bells.

Mr. Shamy questioned if there would be any tread mills.

Mr. Jennings replied no but there will be a stepper and a rowing machine.

Mr. Jackson asked how many clients there would be and the hours of operation.

Mr. Sabosik questioned the number of stations.

Mr. Jennings replied there are five stations.

Mr. Shamy asked if there were set hours of operation.

Mr. Jennings replied he currently has classes scheduled at 7:30am, 8:30am, 9:30am, 5:30pm & 6:30pm. He does have some one on one and semi-private classes as well during the week.

Mr. Shamy asked the maximum class size.

Mr. Jennings replied 10.

Mr. Shamy asked the days of operation.

Mr. Jennings replied Monday-Friday and maybe Saturday mornings for one on one training.

Mr. Shamy asked why he chose this location.

Mr. Jennings stated he always wanted to be in Point Pleasant. He observed the parking lot for two weeks to see if it was viable for his business. There were never less than twelve spots available.

Mr. Ganim questioned if there was going to be music and if it was in a controlled condition.

Mr. Jennings replied yes there is music it helps create an environment. The volume is not that loud.

Mr. Ganim questioned the length of the lease.

Mr. Jennings replied three years.

There were no public questions.

The meeting was opened to the public for comments.

Ms. Lauren Thomson, 3230 Nowata Street was sworn in. Ms. Thomson stated she has been a part of the Boot Camp since June and thinks with the time of the classes parking wouldn't be an issue. She also stated that she doesn't feel the music would be an issue since Matt has to speak over the music.

Mr. Giovanni Clarizio, 2428 Bridge Avenue was sworn in. Mr. Clarizio stated he has been a tenant in the building for 15 years giving music lessons. Parking is a convenient thing, there is plenty of parking. His business is mostly drop off clients. It is also nice to have a business that will add value to the community.

Mr. Michael Bowen 2428 Bridge Avenue was sworn in. Mr. Bowen stated he has been a tenant since May 8th and has not had a problem with parking. He operates a health food store which 70% is internet sales. He feels this type of business would help his walk in sales. It is a win win for everyone.

Caucus

Mr. Jackson reminded the Board that this is a use variance which requires five affirmative votes.

Mrs. Kasper feels it will help further the master plan of the development of Bridge Avenue.

Mr. Sabosik sees no negativity with the application.

Mr. Seebald stated this is low impact for the zone.

Mrs. Kasper stated people could also walk to the location.

Mr. Sabosik feels it could also help the other businesses.

Mr. Ganim stated it is a good site plan. There is no negativity. He would also like to make sure this approval is only for Unit 105.

Mr. Seakan initially had some concerns about parking but the testimony answered any questions that he had.

Mr. Scarpello feels it is a good thing.

Mr. Sutphen made a motion to approve the application for Unit 105, seconded by Mr. Sabosik.

Roll Call Vote

Mr. Sutphen- Yes Mr. Sabosik- Yes Mr. Seebald- Yes Mr. Ganim- Yes
Mr. Seakan- Yes Mrs. Kasper- Yes Mr. Scarpello- Yes

Unfinished Business

09-35- Christenson- Block 306 Lot 62- 1656 Center Street- Appeal / Interpretation(7:32-9:11)

Mr. Steven Pardes, attorney for the applicant, came forward.

Mr. Jackson stated that the zoning officer issued a letter on July 30, 2009 denying the applicant to construct addition living space based on the 2001 resolution. The resolution reads that no additional living space may be constructed as part of this development. Mr. Pardes is taking appeal of the zoning officer's decision.

Mr. Pardes replied that is correct. The issue is simple what did condition # 6 of the 2001 resolution really mean.

Mr. Ron Gasirowski, attorney for objector Alice Rooney 1653 Center Street, doesn't agree with the simplicity of Mr. Pardes application. Mr. Gasirowski stated that Mr. Pardes needs to ask for relief for a front and rear year setback before he can change the use of the area since it is a non-conforming structure.

Mr. Jackson stated Mr. Gasirowski's argument is in order to change the use of a non-conforming structure the applicant has to come to the Board for relief. Mr. Jackson stated the applicant can proceed with his case.

Mr. Pardes stated the application is to determine the correct meaning of the condition in the 2001 resolution. Condition # 6 reads There shall be no additional living space constructed as part of this development. The construction shall be a "cathedral" style ceiling servicing the first floor of this one story ranch style home. There shall be no flooring installed in the new dormer area and it shall be completely open to the first and only story of this home. Mr. Pardes contention is that Mr. Burke erroneously interpreted this condition as there can never be any future additional residential development on the property even if the area complied with the zoning ordinances.

Mr. Jackson clarified that Mr. Burke's letter is saying the resolution from 2001 prohibits any area from increased square footage of living area.

Mr. Pardes stated the question before the Board is what is the correct the determination or the correct meaning of the resolution from 2001. There were concerns from a neighbor in 2001 that Mr. Christenson would have employees sleeping in that additional area.

Mr. Gasiorowski asked if he was referring to the language in the resolution to make his record.

Mr. Pardes replied he has the minutes from September 19, 2001.

Mr. Gasiorowski asked if he has the transcript from the 2001 hearing.

Mr. Pardes replied no. He didn't think the transcript would be available from eight years ago.

Mr. Gasiorowski stated of course the transcripts are available and minutes may not be reflective of exactly what was said at the hearing. He has a problem with Mr. Pardes testifying as to what was said at the meeting without having the transcript. If he wants to refer to something it should be the information contained in the resolution.

Mr. Jackson stated that he believes Mr. Gasiorowski objected to the weight of the evidence not the admissibility.

Mr. Pardes continued that in the minutes Nancy Walsh 1661 Center Street felt the renovation would allow employees to stay there. The resolution only referred to the construction of the dormer in 2001. Again the condition of no additional living space came from the concern of the neighbor. Mr. Pardes also had a newspaper article from the Ocean Star dated September 28, 2001 which similarly states that this was the intention of the Board.

Mr. Gasiorowski objected to the submission of the article.

Mr. Jackson stated that it would be hear say.

Mr. Pardes feels it can be accepted by the Board. The article shows the real intention of the Board.

Mr. Gasiorowski replied that the transcripts need to be ordered.

Mr. Sabosik is concerned that the article is only for one week there could hypothetically be ten articles. Mr. Sabosik is also concerned that Mr. Pardes has certain sections of the article highlighted and would not be reading the whole article into the record.

Mr. Seebald stated he was on the Board in 2001 and he is not sure if the restriction was for the dormers or the whole house.

Mr. Jackson read from Cox 2008 pg. 624 the Board may use any reliable source of information concerning any facts or facts upon which it intends to rely. These sources can be personal observation of Board members written reports of other agencies or testimony of public officials but only if such observations, reports or testimony are made part of the record and exhibits and the applicant has an opportunity to cross examine the witness or the makers of the written report. Mr. Jackson feels the article is problematic.

Mr. Sabosik is concerned that it is hear say and there could have been eight weeks of articles.

Mr. Ganim asked the date of the article.

Mr. Pardes replied September 28, 2001.

Mr. Gasiorowski stated that the burden is on Mr. Pardes to prove that the zoning officer was incorrect. The transcript needs to be ordered.

Mr. Jackson recommends that the Board stay clear of the article.

Mr. Pardes stated it is unlikely that there were eight articles about the hearing. This is probably the only article concerning this hearing. He further stated he was going to

specifically read certain parts of the article but planned on submitting the whole article to the Board. He feels it is important to get the flavor of the article because it confirms what is in the minutes about the rationale of the Board.

Mr. Gasiorowski doesn't want the flavor of the article. The starting point is the transcript and the second is the resolution.

Mr. Jackson feels the article should be marked as Exhibit A-1 and placed in the file but it is the Board decision.

Mr. Sabosik disagrees with Mr. Pardes since some cases have had four- six articles. If we are going to admit one article we should have all of the articles pertaining to this case.

Mr. Seebald stated it was a one day meeting.

Mr. Gasiorowski stated a newspaper article is the writer's recollection of the meeting.

Mr. Ganim asked if either attorney heard the transcript.

Both Mr. Pardes and Mr. Gasiorowski replied no.

Mr. Ganim asked the Board secretary if the transcript is available.

The Board secretary replied yes.

The Board wanted a vote as to whether or not to submit the article as evidence.

Mr. Sabosik made a motion not to allow the article to be read at this time, seconded by Ms. Thomson.

Roll Call Vote

Mr. Sutphen- Yes Mr. Sabosik- Yes Ms. Thomson- Yes Mr. Seakan- Yes
Mr. Ganim- No Mrs. Kasper- No Mr. Seebald- Yes

Exhibit A-1 was marked and placed in the file. A newspaper article from the Ocean Star dated September 28, 2001.

Mr. Pardes thinks the minutes are reliable but if Mr. Gasiorowski would like the transcript he will order the transcript.

Mr. Jackson replied the four corners of the resolution are the Board's decision. What you draw from to make your case is up to you. You don't necessarily need the transcript.

Mr. Seebald thinks that the resolution from 2001 may have just pertained to the dormers. He doesn't think the garage came into play.

Mr. Gasiorowski stated if the transcript is available it should be ordered.

Mr. Jackson believes the Board can determine this based on the resolution.

Mr. Gasiorowski stated that the concern in 2001 was not to permit any additional living space based on the fact that his workers would possibly sleep there. Since then a second garage has been constructed. Now they are back before the Board to seek additional living space without relief of the condition.

Mr. Ganim stated we need to make a decision and get this burnt out project fixed.

Mr. Gasiorowski stated the applicant needs to come back to the Board seeking relief for a front yard setback and rear yard setback and the Board can establish the conditions of the resolution at that time. Otherwise he can remove the garage and remove his front yard setback. If you go ahead you could be overruling the validity of the zoning officer's decision that was hired to make those decisions.

Mr. Ganim stated we have not made a decision yet but we have overruled the zoning officer's decision in the past.

Mr. Jackson read from the letter of the zoning officer July 30th 2009 which states I am denying your request because there shall be no additional living space you will be required to apply to the Zoning Board for an interpretation of this condition. Mr. Burke is inviting the applicant to come before the Board.

Mr. Ganim questioned the fact that in 2001 the applicant made an application and identified that he had a front yard & rear yard setback of the existing footprint which he got relief of. Why is Mr. Gasiorowski saying he has to come back to the Board?

Mr. Gasiorowski replied he is changing the use.

Mr. Ganim stated it is a residential use.

Mr. Gasiorowski stated he is using the property as a commercial use.

Mr. Pardes stated that is irrelevant to this application. They are here for the Board to interpret this condition.

Mr. Jackson asked if it was stated anywhere that the garage area can't be converted into living space.

Mr. Gasiorowski stated the resolution read there is to be no additional living space. It would be an error to hear this application without the transcript.

Mr. Pardes stated he would agree to order the transcript.

Mr. Jackson asked Mr. Pardes and Mr. Gasiorowski if they had any witnesses.

Both replied no.

Mr. Seebald opened the meeting to the public.

Mr. Seebald reminded the public that this application is not about commercial activity at the house and he didn't want to hear testimony about the commercial activity.

Mrs. Mary Furmato 1650 Center Street was sworn in. Mrs. Furmato stated that she feels transcripts should be ordered from all of the hearings. In regards to 2001 this was an angry street. The people were concerned about the business and the activity. There is testimony with respect to employees at the house.

Mr. Pardes objects to all of these comments. All we are seeking is an interpretation of what the Board meant in 2001. The only record that is relevant is what happened in 2001. He also objects to the discussion about alleged commercial activity. This application is solely about condition #6.

Mrs. Furmato stated you are voting on something and she doesn't even know what. He is looking to convert his garage to living space. The neighbors have no idea what he is proposing and she would like to see the plans.

Mr. Jackson stated the only issue here is whether this resolution prohibits some type of living space.

Mr. Ganim asked if she has a garage in her home and if so what she would she do to convert it to living space.

Mrs. Furmato replied yes she does have a garage and she would probably have to speak with Mr. Burke to convert her garage.

Mr. Ganim stated if he wanted to convert his own garage it could be converted into living space by obtaining a building permit. Why do you think Mr. Christenson shouldn't have the same rights that you have? Mr. Ganim wasn't here in 2001 but he has read what the objectors comments that they have no problem with residential development they just don't want the commercial activity.

Mr. Seebald stated the applicant is here to see if he can convert the garage into living space.

Mrs. Furmato stated that you need to take #9 into consideration also which states no commercial enterprise shall exist.

Mr. Seebald stated we need to get off that because it doesn't pertain to tonight's application.

Ms. Furmato stated that if you go through the transcripts of 2001 you will see there were pictures and testimony of business on the property.

Mr. Ganim asked if she heard the transcript.

Ms. Furmato replied she has not but she did inquire about getting the transcript.

Mr. Ganim asked how she can testify about what was in the transcript if she hasn't heard it.

Mr. Seebald asked if she had any other comments that pertain to this application besides commercial activity.

Ms. Furmato stated the additional living space was prevented because Mr. Christenson had multiple employees that were coming in and out of his house.

Mr. Jackson asked if she was concerned that Mr. Christenson would have borders stay at his home and help with his business.

Ms. Furmato replied yes.

Mr. Jackson stated the only issue in front of the Board is whether this resolution prohibits some type of living quarters in the garage.

Ms. Furmato stated she was also concerned about the safety characteristics at the end of the street.

Mr. Jackson stated that is a different issue. The question is whether or not the Board seeks to prohibit living space.

Ms. Furmato feels the Board should prohibit living space and they should get the transcript.

There were no further public questions or comments.

Mr. Jackson stated the Board has a decision to make.

Mr. Sabosik feels the 2001 transcript might help the Board make a decision.

Mr. Seakan hasn't heard an alternate plan of how the Board is supposed to interpret the resolution. He doesn't feel the Board should interpret condition #6 differently than it reads. The resolution was clear on limiting residential space.

Mr. Pardes thinks the Board should interpret it as there should be no additional living space as part of this development, meaning the development of 2001 only.

Mr. Ganim thinks the Board should make a decision tonight.

Caucus

Mr. Sabosik thinks the statement there shall no be additional living space constructed as part of this development means, the property is the development.

Mr. Sutphen stated that resolutions stay with the property and nothing has changed here.

Mr. Jackson stated there is a difference of opinion here. The applicant believes that limitation pertained only to wanting a cathedral ceiling not a second story. Mr.

Gasiorowski believes that it means no additional residential space.

Mr. Sabosik stated that is why the Board needs to see the transcript.

Mr. Seakan can't see reversing or interpreting this without listening to the transcript. His interpretation is the development is the property itself.

Mr. Sabosik stated the restraint on a property goes forever.

Mr. Ganim replied yes it runs with the property but what was the intent in 2001.

Mr. Sabosik stated he also agrees with Mr. Seakan that he would like to see the transcript.

Mr. Ganim questioned how the transcript would affect your vote.

Mr. Sabosik replied it might have intent or statements that clarify condition #6.

Mr. Seebald stated none of this would have even come into play if there wasn't a fire. If it can be rebuilt as a garage is it a big deal to convert it to living space or does it have to stay a garage.

Mr. Sabosik stated some members were concerned about parking capabilities.

Mrs. Kasper stated he doesn't need parking he only has two bedrooms.

Mr. Ganim stated if he converted the garage into living space it was for a family room which doesn't increase the parking requirement.

Mr. Sabosik stated yes but you are taking two parking spots off the property.

Mr. Ganim and Mr. Sutphen questioned if he can rebuild the garage.

Mr. Seebald replied yes he just can't make it living space.

Mrs. Kasper stated the resolution says living space and the minutes say living quarters.

Mrs. Kasper thinks maybe the transcripts would make a difference.

Mr. Ganim questioned why we are punishing this man. Is it because we have all of this testimony and he has demonstrated some issues that he might be a bad neighbor but that doesn't mean he doesn't have the same rights as you and me.

Mr. Sabosik objects to that. The law is dictated by the 2001 resolution.

Mr. Jackson stated maybe it would make sense to get the transcript since the Board is divided.

Mrs. Kasper questioned what the Boards options are. If the Board agrees with Mr. Burke he can rebuild the garage. If the Board says he can rebuild it as living space, then what.

Mr. Jackson replied he has to build within the four corners of that area.

Mr. Sutphen questioned what if we determined this burned down garage is null and void and he has to start from square one. Does the Board have the ability to do that?

Mr. Ganim stated the structure exists.

Mr. Jackson replied as far he knows Kevin Burke has not said he can't rebuild the garage.

Mrs. Kasper stated as far as the neighborhood goes she has not seen another house with two attached garages.

Mr. Ganim stated we seem to keep putting it off and it is not helping anyone.

Mr. Sabosik stated the Board has made decisions. It is up to the applicant to express a need that is beneficial to the neighborhood.

Mr. Seakan stated they are not trying to punish anyone.

Mr. Ganim stated the only reason he came before use last time was to seek additional relief and he was denied.

Mr. Seakan stated he can rebuild the garage but he chose to come before the Board again. Therefore we need as much information as possible to make a decision.

Mr. Jackson read ordinance 19.17.5 Destruction and Restoration into the record.

Mr. Pardes doesn't want to waste any more time or effort. He needs to know if the Board wants the transcript or not.

Mr. Ganim made a motion for the applicant to order the transcript of the September 19, 2001 hearing, seconded by Mrs. Kasper.

Roll Call Vote

Mr. Sutphen- Yes Mr. Sabosik- Yes Ms. Thomson- No Mr. Seakan- Yes
Mr. Ganim- No Mrs. Kasper- Yes Mr. Seebald- No

Mr. Sutphen asked if the attorneys would like to proceed without the transcripts since it is going to take approximately six weeks to get the transcript.

Mr. Pardes doesn't think the Board needs the transcripts but does not want to give Mr. Gasiorowski a reason for an appeal.

Mr. Gasiorowski thinks it would be an error not to have the transcript.

Mr. Ganim made a motion to receive a transcript and carry the hearing to October 21, 2009, seconded by Ms. Thomson.

Roll Call Vote

Mr. Sutphen- Yes Mr. Sabosik- Yes Ms. Thomson- Yes Mr. Seakan- Yes
Mr. Ganim- Yes Mrs. Kasper- Yes Mr. Seebald- Yes

This hearing has been carried to October 21, 2009. There will be no further notice and the applicant has waived the time restriction if necessary.

Resolutions

09-21- Christenson- Block 306 Lot 62- 1656 Center Street- Front Yard Setback Dormer & Front Yard Setback Roofline of Garage- Denied

Roll Call Vote

Mr. Seebald – Yes Mr. Sabosik- Yes Mr. Ganim-Yes
Mr. Scarpello- Yes

Vouchers

King, Kitrick & Jackson, LLC

Christenson- \$41.25 First Baptist Church- \$1113.75
Losa- \$41.25 Brady- \$41.25
D'Ambrosia- \$41.25 O'Brien v. PPBOA- \$2212
Mosca- \$247.50 Hullfish- \$247.50

Starkey, Kelly, Bauer, Kenneally & Cunningham

Fayad- \$412.50

Motion to pay made by Mr. Ganim, seconded by Mr. Sabosik. All were in favor.

Remington, Vernick & Vena Engineers, Inc.

First Baptist Church- \$1725.00

Motion to pay was made by Mr. Ganim, seconded by Mr. Sabosik. All were in favor.

Requisitions:

Hullfish- \$305.62
Mosca- \$113.87

Motion to pay was made by Mrs. Kasper, seconded by Mr. Ganim. All were in favor

Mr. Ganim made a motion to adjourn, seconded by Mrs. Kasper. All were in favor. The meeting adjourned at 9:21pm.

Respectfully submitted,

Sharon Bestine
Zoning Board Secretary